

REMARKS

Claims 1, 3-24, and 26-41 are pending in this application. After two previous actions on the merits, the Office has now issued a restriction requirement dividing the claims into three groups: Group I including claims 1 and 3-14; Group II including claims 15-22; and Group III including claims 23-24 and 26-41.

Applicant provisionally elects the claims of Group III, all of which are directed to a computer system or network of computer systems. Applicant makes this provisional election *with traverse*.

The Law on Restriction Practice

Restriction of claims is proper “*only* if they are . . . independent or distinct” *and* “there [is] a serious burden on the examiner” in treating the claims together. (MPEP 803, emphasis added.) “If the search and examination of an entire application can be made without serious burden, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.” (MPEP 803, emphasis added.) Furthermore, “two different combinations” are independent only if they have “different modes of operation, different functions, or different effects” *and* they are “not disclosed as capable of use together” (MPEP 806.04.) The Office (on page 2 of its action) seems to have confused this requirement of “independence” with the requirements for “distinctness.”

Restriction of the Group I and Group II claims

Applicant does not understand why the claims are subject to restriction after the Office has already issued two actions on the merits. While the subject matter of the Group I and Group II claims certainly has “different functions and different effects,” Applicant disagrees that the combinations are “not disclosed as capable of use together.” Applicant’s specification clearly describes a system in which the measurement of “a customer’s wait time in a service lane” (claim 15) is used as one way of “assessing the quality-of-service received by the customer during [a] visit” to a service establishment

(claim 1). The inventions claimed in these two groups therefore are not independent, as suggested by the Office in its discussion on page 2 of the action.

The Office must have agreed with this position at the start of prosecution, as it not only conducted a search on the Group I and Group II claims, but also issued two substantive actions on the merits of these claims. Applicant points out that the scope of the claims in both groups has remained constant up to this point. Applicant did amend claim 1 in reply to the Office's first action, but it did so only by incorporating limitations previously found in claim 2. No new limitations were added to the claim.

Perhaps more importantly, Applicant notes that claims 5-9 of Group I include customer wait-time limitations that are very similar to those found in the broadest claim of Group II. The result is that any search that the Examiner would conduct in connection with the Group I claims would, by definition, subsume the scope of any search conducted for the Group II claims. Searching the inventions of these two groups together, therefore, does not place any undue burden on the Examiner. As a result, section 803 of the MPEP dictates that restriction of these claims is improper.

Restriction of the Group III Claims

It is true that the Group III claims cover computer systems and computer networks, while the Group I and Group II claims cover methods. The limitations found in the system claims, however, are so similar to those found in the method claims that any search performed by the Office with respect to claims in the "system" group would be of very similar, if not identical, scope to any search performed for the corresponding "method" group.

Claim 1 and claim 24, for example, are so similar in nature that any search for systems covered by claim 24 would almost certainly turn up all art relevant to the method of claim 1. Applicant would question the quality of the search performed by the Office if this were not true. The same can be said of claims 15 and 36. The result is that restriction of the Group III claims from the Group I and Group II claims is improper.

CONCLUSION

In response to the restriction requirement, Applicant provisionally elects the claims of Group III. Applicant feels strongly, however, that this restriction is improper – the claims of all three groups should be examined together, as the prior-art search conducted by the Office for the Group III claims will turn up all art relevant to the other two groups. Continuing to examine all of the claims together (as the Office has done for two substantive actions already) places “no serious burden on the Examiner,” and therefore restriction is improper.

Applicant asks the Office to reconsider the restriction requirement, examine all claims together, and allow all of the claims. Please apply any charges that might be due, excepting the issue fee but including fees for extensions of time, to deposit account 14-0225.

Respectfully,

A handwritten signature in black ink, appearing to read "John D. Cowart", written over a horizontal line.

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